
APPENDIX A

**CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT**

No. A156947

[Filed May 1, 2019]

JOHN HSU,

Plaintiff and Appellant,

v.

CITY OF BERKELEY,

Defendant and Respondent.

**ORDER DENYING
REQUEST TO APPEAL**

BY THE COURT:

John Hsu has been declared to be a vexatious litigant and is subject to a prefilings order. On April 18, 2019, Mr. Hsu filed an application seeking

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permission to appeal what he characterizes as a February 14, 2019, order that automatically dismissed the complaint he had filed in the court below [Alameda County Super. Ct. No. RS18924493], and the trial court's failure to reverse the 2009 order that declared him to be a vexatious litigant. That application is denied. Mr. Hsu has failed to show a reasonable possibility that his appeal has merit. (Code Civ. Proc., §391.7.)

The appeal is dismissed.

Dated: 05/01/2019

Humes, A.P.J. A.P.J.
ADMINISTRATIVE PRESIDING JUSTICE

APPENDIX B

**CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT**

No. A156947

[Filed May 13, 2019]

JOHN HSU,

Plaintiff and Appellant,

v.

CITY OF BERKELEY,

Defendant and Respondent.

**ORDER DENYING
PETITION FOR REHEARING**

Appellant's petition for rehearing, filed on May 10, 2019, is denied.

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Dated: 05/13/2019

Humes, A.P.J. A.P.J.
ADMINISTRATIVE PRESIDING JUSTICE

APPENDIX C

IN THE SUPREME COURT OF CALIFORNIA

En Banc

No. S256112

[Filed July 10, 2019]

JOHN HSU, Plaintiff and Appellant,

v.

CITY OF BERKELEY, Defendant and Respondent.

ORDER DENYING PETITION FOR REVIEW

The petition for review is denied.

Kruger, J., was absent and did not participate.

CANTIL-SAKAUYE

Chief Justice

APPENDIX D

California Code of Civil Procedure
Part 2. Of Civil Actions
Title 3A. Vexatious Litigants
Cal. Code Civ. Proc. §§ 391-391.8
(Last amended in 2012)

§ 391. Definitions

As used in this title, the following terms have the following meanings:

- (a) "Litigation" means any civil action or proceeding, commenced, maintained or pending in any state or federal court.
- (b) "Vexatious litigant" means a person who does any of the following:
 - (1) In the immediately preceding seven-year period has commenced, prosecuted, or maintained in propria persona at least five litigations other than in a small claims court that have been (i) finally determined adversely to the person or (ii) unjustifiably permitted to remain pending at least two years without having been brought to trial or hearing.
 - (2) After a litigation has been finally determined against the person, repeatedly relitigates

or attempts to relitigate, in propria persona, either (i) the validity of the determination against the same defendant or defendants as to whom the litigation was finally determined or (ii) the cause of action, claim, controversy, or any of the issues of fact or law, determined or concluded by the final determination against the same defendant or defendants as to whom the litigation was finally determined.

(3) In any litigation while acting in propria persona, repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay.

(4) Has previously been declared to be a vexatious litigant by any state or federal court of record in any action or proceeding based upon the same or substantially similar facts, transaction, or occurrence.

(c) "Security" means an undertaking to assure payment, to the party for whose benefit the undertaking is required to be furnished, of the party's reasonable expenses, including attorney's fees and not limited to taxable costs, incurred in or in connection with a litigation instituted, caused to be instituted, or maintained or caused to be maintained by a vexatious litigant.

(d) "Plaintiff" means the person who commences, institutes or maintains a litigation or causes it to be commenced, instituted or maintained, including an attorney at law acting in propria persona.

(e) "Defendant" means a person (including corporation, association, partnership and firm or governmental entity) against whom a litigation is brought or maintained or sought to be brought or maintained.

§ 391.1. Motion for order requiring plaintiff to post security; Motion for order dismissing the litigation; Grounds; Time of filing

In any litigation pending in any court of this state, at any time until final judgment is entered, a defendant may move the court, upon notice and hearing, for an order requiring the plaintiff to furnish security or for an order dismissing the litigation pursuant to subdivision (b) of Section 391.3. The motion for an order requiring the plaintiff to furnish security shall be based upon the ground, and supported by a showing, that the plaintiff is a vexatious litigant and that there is not a reasonable probability that he or she will prevail in the litigation against the moving defendant.

§ 391.2. Hearing procedure

At the hearing upon the motion the court shall consider any evidence, written or oral, by witnesses or affidavit, as may be material to the ground of the motion. Except for an order dismissing the litigation pursuant to subdivision (b) of Section 391.3, no determination made by the court in determining or

ruling upon the motion shall be or be deemed to be a determination of any issue in the litigation or of the merits thereof.

§ 391.3. Finding; Amount of security; Dismissal

(a) Except as provided in subdivision (b), if, after hearing the evidence upon the motion, the court determines that the plaintiff is a vexatious litigant and that there is no reasonable probability that the plaintiff will prevail in the litigation against the moving defendant, the court shall order the plaintiff to furnish, for the benefit of the moving defendant, security in such amount and within such time as the court shall fix.

(b) If, after hearing evidence on the motion, the court determines that the litigation has no merit and has been filed for the purposes of harassment or delay, the court shall order the litigation dismissed. This subdivision shall only apply to litigation filed in a court of this state by a vexatious litigant subject to a prefilings order pursuant to Section 391.7 who was represented by counsel at the time the litigation was filed and who became in propria persona after the withdrawal of his or her attorney.

(c) A defendant may make a motion for relief in the alternative under either subdivision (a) or (b) and shall combine all grounds for relief in one motion.

§ 391.4. Dismissal on failure to post security

When security that has been ordered furnished is not furnished as ordered, the litigation shall be dismissed as to the defendant for whose benefit it was ordered furnished.

§ 391.6. Motion as stay of proceedings; Time for pleading to complaint

Except as provided in subdivision (b) of Section 391.3, when a motion pursuant to Section 391.1 is filed prior to trial the litigation is stayed, and the moving defendant need not plead, until 10 days after the motion shall have been denied, or if granted, until 10 days after the required security has been furnished and the moving defendant given written notice thereof. When a motion pursuant to Section 391.1 is made at any time thereafter, the litigation shall be stayed for such period after the denial of the motion or the furnishing of the required security as the court shall determine.

§ 391.7. Vexatious litigant; Prefiling order prohibiting filing of new litigation

(a) In addition to any other relief provided in this title, the court may, on its own motion or the motion of any party, enter a prefiling order which prohibits a vexatious litigant from filing any new litigation in

the courts of this state in propria persona without first obtaining leave of the presiding justice or presiding judge of the court where the litigation is proposed to be filed. Disobedience of the order by a vexatious litigant may be punished as a contempt of court.

(b) The presiding justice or presiding judge shall permit the filing of that litigation only if it appears that the litigation has merit and has not been filed for the purposes of harassment or delay. The presiding justice or presiding judge may condition the filing of the litigation upon the furnishing of security for the benefit of the defendants as provided in Section 391.3.

(c) The clerk may not file any litigation presented by a vexatious litigant subject to a prefilings order unless the vexatious litigant first obtains an order from the presiding justice or presiding judge permitting the filing. If the clerk mistakenly files the litigation without the order, any party may file with the clerk and serve, or the presiding justice or presiding judge may direct the clerk to file and serve, on the plaintiff and other parties a notice stating that the plaintiff is a vexatious litigant subject to a prefilings order as set forth in subdivision (a). The filing of the notice shall automatically stay the litigation. The litigation shall be automatically dismissed unless the plaintiff within 10 days of the filing of that notice obtains an order from the presiding justice or presiding judge permitting the filing of the litigation as set forth in subdivision (b). If the presiding justice or presiding judge issues an

order permitting the filing, the stay of the litigation shall remain in effect, and the defendants need not plead, until 10 days after the defendants are served with a copy of the order.

(d) For purposes of this section, "litigation" includes any petition, application, or motion other than a discovery motion, in a proceeding under the Family Code or Probate Code, for any order.

(e) The presiding justice or presiding judge of a court may designate a justice or judge of the same court to act on his or her behalf in exercising the authority and responsibilities provided under subdivisions (a) to (c), inclusive.

(f) The clerk of the court shall provide the Judicial Council a copy of any prefilings orders issued pursuant to subdivision (a). The Judicial Council shall maintain a record of vexatious litigants subject to those prefilings orders and shall annually disseminate a list of those persons to the clerks of the courts of this state.

§ 391.8. Application to vacate prefilings order and removing vexatious litigant's name from Judicial Council's list of vexatious litigants: Effect of denial

(a) A vexatious litigant subject to a prefilings order under Section 391.7 may file an application to vacate the prefilings order and remove his or her name from the Judicial Council's list of vexatious litigants subject to prefilings orders. The application shall be

filed in the court that entered the prefiling order, either in the action in which the prefiling order was entered or in conjunction with a request to the presiding justice or presiding judge to file new litigation under Section 391.7. The application shall be made before the justice or judge who entered the order, if that justice or judge is available. If that justice or judge who entered the order is not available, the application shall be made before the presiding justice or presiding judge, or his or her designee.

(b) A vexatious litigant whose application under subdivision (a) was denied shall not be permitted to file another application on or before 12 months has elapsed after the date of the denial of the previous application.

(c) A court may vacate a prefiling order and order removal of a vexatious litigant's name from the Judicial Council's list of vexatious litigants subject to prefiling orders upon a showing of a material change in the facts upon which the order was granted and that the ends of justice would be served by vacating the order.